

Revision Checklist 188 Summary

Rule Title:	NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Technical Corrections
Checklist Title:	Hazardous Air Pollutant Standards; Technical Corrections
Reference:	65 <u>FR</u> 42292-42302; 66 <u>FR</u> 24270-24272; 66 <u>FR</u> 35087-35107
Promulgation Date:	July 10, 2000; May 14, 2001; July 3, 2001
Effective Date:	July 10, 2000; May 14, 2001; October 16, 2001
Cluster:	RCRA Cluster XI
Provision Type:	Non-HSWA
Linkage:	168, 182
Optional:	Conditionally optional

Summary: (1) This rule adds gas turbines to the list of approved burners for comparable/syngas fuel burners under 40 CFR 261.38(c)(ii)(2). Gas turbines were inadvertently excluded from the list of approved fuel burners in the June 19, 1998 National Emissions Standards for Hazardous Air Pollutants (NESHAPS) rulemaking (63 FR 33782; Revision Checklist 168). This rule also corrects a typographical error made in the June 19, 1998 rule. States that adopted the optional 40 CFR 261.38 and 270.42(j)(1) provisions added by Revision Checklist 168, should also adopt the corrections in this rule.

(2) This rule makes corrections and clarifying revisions to 40 CFR parts 60 and 63. These corrections are noted for informational purposes only, as they are not included in the checklist because they are outside the RCRA program.

(3) This checklist includes the May 14, 2001 (66 FR 24270) amendment vacating the Notice of Intent to Comply (NIC) provisions of EPA's rules relating to the standards for hazardous waste combustors in 40 CFR part 63, subpart EEE. Prior to the vacatur, 40 CFR 270.42(j) allowed facilities to use the streamlined permit modification procedures; however, before they could do so they had to comply with the NIC requirements of 40 CFR 63.1210. Facilities were required to submit their NICs by October 2, 2000 and EPA worked closely with the regulated community to assure that all sources intending to continue operating submitted these NICs. The court issued the vacatur of the NIC provisions on October 11, 2000. Because this was after the date facilities were required to submit their NICs, EPA has determined the court's action does not impact a facility's ability to request a RCRA permit modification using the streamlined procedures of 40 CFR 270.42(j) provided the NIC was submitted as required by the rule that was in affect prior to July 1, 2000 and published in the 40 CFR Part 63, revised as of July 1, 2000.

The language at 40 CFR 270.42(j) was modified by the July 10, 2000 rule addressed by Revision Checklist 188 to include a conforming reference to 40 CFR 63.1210, that had been inadvertently left out of the September 30, 1999 rule, which moved the fast-track requirements from 40 CFR 63.1211 to 40 CFR 63.1210. The May 14, 2001 rule, also addressed by Revision Checklist 188, clarified the

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language at 40 CFR 270.42(j) to indicate which version of 40 CFR 63.1210 must be complied with as a result of the NIC vacatur.

(4) This checklist also includes the July 3, 2001 (66 FR 35106) amendment which makes improvements to the implementation of the emission standards of 40 CFR part 63 and clarifies 40 CFR 264.340.

State Authorization: This rule is placed in RCRA Cluster XI. The State modification deadline is July 1, 2002 (or July 1, 2003 if a State statutory change is necessary).

The revisions in this checklist are promulgated pursuant to non-HSWA authorities. Therefore, the revisions in this rule only take effect in an authorized State when the State adopts and receives authorization for Revision Checklist 188. Only final authorization is available.

While the provisions on Revision Checklist 188 were all introduced by the optional Revision Checklists 168 or 182, States are required to make the Revision Checklist 188 changes if they chose to adopt the Revision Checklist 168 or 182 changes. Thus, the revisions made by Revision Checklist 188 are conditionally optional.

This rule has been designated as minor or routine; therefore, as indicated in the April 28, 1999 memorandum from the Acting Director of the Office of Solid Waste, States are not required to submit an Attorney General's (AG) statement, program description, and an MOA. The State Revision Application must include applicable regulations and Revision Checklist 188. Note that under 40 CFR 271.21(d), the Regional office retains the ability to request an AG statement addendum, other associated checklists, a program description and an MOA if necessary.

Attorney General's Statement Entry: The entry at Subsection II (F) in the Model Revision Attorney General's Statement should be replaced with the following revised entry:

Revision Checklist 188 Summary (cont'd)

F. [OPTIONAL]: This is a reduced requirement.] State statutes and regulations exclude from the definition of solid waste fuels which are produced from a hazardous waste, but which are comparable to some currently used fossil fuels, as indicated in Revision Checklists 168, 182, and 188.

Federal Authority: RCRA §§1004, 1006, and 3001; 40 CFR 261.4(a)(16)¹, 261.38, and 261.38 Table 1, as amended June 19, 1998 (63 FR 33782), September 30, 1999 (64 FR 52828), November 19, 1999 (64 FR 63209), and July 10, 2000 (65 FR 42292).

Citation of Laws and Regulations; Date of Enactment and AdoptionRemarks of the Attorney General

The entry at Subsection XV (FF) in the Model Revision Attorney General's Statement should be replaced with the following revised entry:

FF. [OPTIONAL]: This is a reduced requirement.] State statutes and regulations include an exemption for hazardous waste burning incinerators from the RCRA national stack emission standards when owners or operators demonstrate compliance with the MACT requirements of 40 CFR part 63 subpart EEE by conducting a comprehensive performance test and submitting a Notification of Compliance as indicated in Revision Checklists 182 and 188. However, after this demonstration, RCRA permit conditions will remain in effect until the permit is modified, terminated, or revoked, unless the permit expressly provides otherwise.

Federal Authority: RCRA §§ 1006(b), 3004(a), and 3005(c)(3); 40 CFR 264.340(b)-(e), 265.340(b)-(c), 270.19 intro, 270.19(e), and 270.62 intro, as amended September 30, 1999 (64 FR 52828) and July 3, 2001 (66 FR 35087).

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The entry at Subsection XVI (BB) in the Model Revision Attorney General's Statement should be replaced with the following revised entry:

¹ 63 FR 33782 contains a typographical error. The rule indicates that it is adding 261.4(a)(16), which was previously added by 63 FR 28556 (see Revision Checklist 167). The correct numbering of the added paragraph should be 261.4(a)(17).

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BB. [OPTIONAL]: This is a reduced requirement.] State statutes and regulations include requirements for hazardous waste combustion facility permit modifications to meet 40 CFR part 63 MACT standards as indicated in Revision Checklists 168, 182, and 188. State statutes and regulations also address such changes during interim status.

Federal Authority: RCRA §§ 1006, 3004, 3005, and 7004; 40 CFR 270.42(j), 270.42 Appendix I (L(9)), and 270.72(b)(8), as amended June 19, 1998 (63 FR 33782), September 30, 1999 (64 FR 52828), July 10, 2000 (65 FR 42292), and May 14, 2001 (66 FR 24270).

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney General

Incorporation by Reference Guidance: At this time, it is not clear if the July 3, 2001 amendment to this rule will be included in the printed version of 40 CFR, (revised as of July 1, 2001). EPA strongly encourages States that incorporate by reference through the July 1, 2001 CFR, to also incorporate by reference the July 3, 2001 amendment to this rule.

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(3) This checklist includes the May 14, 2001 (66 FR 24270) amendment vacating the Notice of Intent to Comply (NIC) provisions of EPA's rules relating to the standards for hazardous waste combustors in 40 CFR part 63, subpart EEE. Prior to the vacatur, 40 CFR 270.42(j) allowed facilities to use the streamlined permit modification procedures; however, before they could do so they had to comply with the NIC requirements of 40 CFR 63.1210. Facilities were required to submit their NICs by October 2, 2000 and EPA worked closely with the regulated community to assure that all sources intending to continue operating submitted these NICs. The court issued the vacatur of the NIC provisions on October 11, 2000. Because this was after the date facilities were required to submit their NICs, EPA has determined the court's action does not impact a facility's ability to request a RCRA permit modification using the streamlined procedures of 40 CFR 270.42(j) provided the NIC was submitted as required by the rule that was in affect prior to July 1, 2000 and published in the 40 CFR Part 63, revised as of July 1, 2000.

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